

IN THE MATTER OF:

TRIAD GUARANTY INSURANCE
CORPORATION
and
TRIAD GUARANTY ASSURANCE
CORPORATION

HEARING NO. 12-HR-0902

ORDER

I, Andrew Boron, Director of the Illinois Department of Insurance, hereby certify that I have read the Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Louis Butler, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made apart hereof.

I, Andrew Boron, Director of the Illinois Department of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV and Article XXIX of the Illinois Insurance Code (215 ILCS 5/401 et. seq.) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et. seq.).

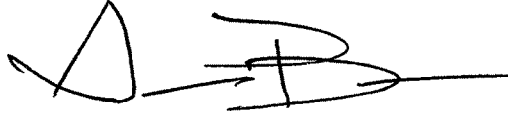
This Order is a Final Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1 et. seq.). Parties to the proceeding may petition the Director of Insurance for a Rehearing or to Reopen the Hearing pursuant to 50 Ill. Adm. Code 2402.280. Appeal of this Order is governed by the Illinois Administrative Review Law (735 ILCS 5/3-101 et. seq.).

NOW IT IS THEREFORE ORDERED THAT:

- 1) Respondents, shall be placed in rehabilitation including a determination that TGIC is insolvent and Respondents' further transaction of business would be hazardous to its policyholders, creditors or to the public; and
- 2) The costs of the hearing are waived.

DEPARTMENT OF INSURANCE
State of Illinois

Date: 12-11-12

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Andrew Boron
Director

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF:

TRIAD GUARANTY INSURANCE
CORPORATION
and
TRIAD GUARANTY ASSURANCE
CORPORATION

HEARING NO. 12-HR-0902

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

The above-captioned matter was called for a hearing in Chicago, Illinois at approximately 10:05 a.m. on September 10, 2012 before Louis Butler, acting as Hearing Officer, pursuant to the designation and appointment of the Director of Insurance of the State of Illinois.

Appearing for the Department were Jim Rundblom and Mr. Leonard Gail. Appearing on behalf of Triad Guaranty Insurance Corporation and Guaranty Assurance Corporation were Mr. Kenneth W. Jones, Mr. Earl Wall and Mr. will Ratliff.

Having heard and considered all of the evidence and testimony offered at the aforesaid Hearing and having been otherwise fully advised in the premises, the Hearing Officer submits the following Findings, Conclusions and Recommendations to the Director of Insurance:

FINDINGS OF FACT

1. Hearing Officer Exhibit # 1 is a Notice of Hearing to Triad Guaranty Insurance Corporation and Triad Guaranty Assurance Corporation (Respondents or Triad).
2. Hearing Officer Exhibit # 2 is the Authority to Conduct Hearing dated August 22, 2012 appointing Louis Butler as the Hearing Officer in this matter.
3. Hearing Officer Exhibit # 3 is an August 24, 2012 Order that details the order of the proceedings.
4. Hearing Officer Exhibit # 4 is a letter from Mr. Timothy P. Law requesting an extension of the date for submission of written comments from September 11, 2012 to September 25, 2012.

5. Hearing Officer Exhibit # 5 is a September 20, 2012 Order extending the time for written submissions until October 9, 2012.
6. Hearing Officer Exhibit # 6 is an October 4, 2012 Order extending the time for written submissions until October 23, 2012.
7. Hearing Officer Exhibit # 7 is a Motion by the Department for Extension of Time to File Written Briefs or Comments to November 13, 2012.
8. Hearing Officer Exhibit # 8 is an October 19, 2012 Order extending the time for written submissions until November 13, 2012.
9. Hearing Officer Exhibit # 9 is a November 9, 2012 Order extending the time for written submissions until November 30, 2012.
10. Amicus Court Reporters recorded the testimony taken in this proceeding and charged the Department \$467.35 for the Court Reporter's attendance and one copy of the proceedings.
11. The purpose of this hearing will be for the Director to make a final determination whether Corrective Order 01-2009 issued by the former Director, Michael McRaith, on March 31, 2009 should remain in effect, be modified or be vacated. A copy of the Corrective Order is attached as Exhibit 1 and is incorporated by reference as if fully set forth herein. A copy of your counsel's letter requesting a hearing is attached as Exhibit 2, and is also incorporated by reference as if fully set forth herein.
12. Opening statement by Ken Jones of Triad
 - a. In June 2008 Triad entered into run-off working with the Department to develop a plan that would maximize the value of Triad's insurance coverage while at the same time treating all policyholders equitably. The plan was finalized and filed with the Department in October 2008. In June 2008, Triad believed that it had sufficient claims space capability to meet its obligation. Triad's projections were also supported by independent third party analysis and projections.
 - b. While the capital levels were below the amount needed to support the writing of new business, the projections indicated that Triad would likely maintain a positive capital position during run-off. The severe recession which produced a spike in the unemployment rate along with the unprecedented decline in home prices combined to cause a dramatic deterioration in the mortgage and housing market in late 2008. Triad's projections at the end of 2008 indicated that at a minimum the company would report a deficit in capital sometime in 2009 and would possibly be unable to meet its policyholder obligations in full.

- c. The Department determined that avoiding receivership or rehabilitation was in the best interest of the insured lenders. In 2009, Triad developed a capital maintenance plan that would result in Triad maintaining a positive statutory capital position at all times during the run-off. The mechanism under the capital maintenance plan is the payment of legitimate claims with a combination of cash and a deferred payment obligation (DPO). Absent the capital maintenance plan the Department would have been forced to take an action that it believed would have been detrimental to Triad's policyholders.
- d. The maintenance plan was designed so that all insured lenders would obtain the maximum benefit from the insurance coverage in the event of a loss under their coverage and be treated equally regardless of when the loss occurred. A risk under the plan was the cash portion of the claim payment was initially set too high and that at some point in the future the cash amount would need to be reduced. That risk was mitigated by establishing the conservative level for the initial forty percent deferral percentage supported at the time by Triad and independent third party projections.
- e. The projected ultimate payment percentage has been constantly monitored through semiannual forecast updates provided to the Department. For all the forecast periods, the projected percentage of policyholder obligations to be paid by Triad has demonstrated a significant margin over the current sixty percent cash payment, including under stress scenarios that significantly increase future losses.
- f. Triad has been able to create value for insured lenders through the monetization of intangible assets, fair and effective loss mitigated processes and the retention of experienced and knowledgeable personnel to manage the run-off all the while steadily reducing expenses. The supervision plan adopted by the Department through its corrective orders has worked well for Triad's insured lenders. To the Department's credit the corrective orders are well thought out and drafted. So well, that until this point there has been no modifications necessary since the capital maintenance plan was adopted in 2009.
- g. Today we are here to consider two proposed modifications; neither affects the intent of the orders or Triad's ability to continue to make payments as it does today.

13. Opening statement by Jim Rundblom of the Department

- a. Triad Guaranty Insurance Corporation and its reinsurance affiliate, Triad Guaranty Assurance Corporation (Triad) are licensed Illinois domestic insurers having authority to issue mortgage guaranty insurance. Triad's policies insure lending in the residential housing market, mortgage guaranty insurance; indemnify lenders against losses occasioned by default of a borrower who has mortgaged property as security for a loan.
- b. Generally, the insurance premiums are paid by the borrower on a continuing basis as part of their loan payment throughout the life of the loan and the policy cannot be cancelled by the insurer. After the housing bubble burst in 2007 and housing prices began their decline, Triad, as with other mortgage insurers, began experiencing substantial losses as borrowers defaulted on the loans Triad had insured. After Triad's attempts at raising new capital were

unsuccessful, Triad began to work on a plan to run-off the existing mortgage insurance business and on August 1, 2008,

- c. Triad entered into a stipulation and consent order with the Director of Insurance where Triad agreed that on or after July 15, 2008, Triad would not issue any new commitment of insurance for any jurisdiction other than with respect to modifications to refinance Triad's existing commitments. On August 5, 2008, Triad entered into a second order with the Director in the form of an agreed corrective order, Corrective Order 01-2008. This corrective order required Triad to file a corrective action plan with the Director by August 15, 2008 and also required Triad to obtain the Director's approval before paying dividends, interest or principal on its surplus notes purchasing assets or entering into transactions having a value of \$100,000 or more.
- d. Triad was also required to make various additional periodic filing with the Director. The run-off proceeded and on October 10, 2008, Triad filed its official run-off plan with the Director. Several months later after Triad's financial condition did not improve, the Director determined that additional corrective measures were necessary to ensure the policyholder claims would continue to be paid. These additional measures included a plan where claims against Triad through defaults on mortgages that Triad had insured would be paid sixty percent cash with the remaining forty percent taking the form of a DPO.
- e. The DPO's would be secured by Triad placing certain of its investment assets in escrow. These DPO's would also accrue a carrying charge based upon the yield of Triad's investment portfolio. Before issuing an order for this DPO plan, the Director held a quasi-public hearing on May 8, 2009. The second corrective order, known as Amended Corrective Order 01-2009, authorizing a DPO arrangement was issued by the Director on May 26, 2009.
- f. In July 2009, an escrow was established by Triad with a major financial institution for securing the assets backing the DPO's pursuant to the amended corrective order. Since that time Triad has informed the Department that as of July 2012 it would no longer have sufficient assets to fund the escrow.
- g. On March 29, 2012 Triad proposed revisions to the Amended Corrective Order to change the mandatory requirement for funding of the DPO escrow and also change the method of computing the carrying charge. In view of the importance of these issues and the need for transparency, the Director has chosen to hold this public hearing.

14. Triad Presentation by Mr. Jones

- a. The two proposed amendments to the Order do not change the intent of the Order, but are necessary to make the Order internally consistent with its stated objectives. With respect to the third topic, Triad believes that the current run-off structure developed by the Department is innovative and effective, maximizing the ultimate benefits available to policyholders while maintaining effective oversight by the Department.

- b. The proposed amendment to the Corrective Order would eliminate the absolute requirement to escrow assets equal to the amount of the DPO's, a requirement that is inconsistent with the purpose of the plan.
- c. It would permit the Director to establish an escrow requirement in his discretion for all or a portion of the DPO amount.
- d. This is a technical amendment to correct a drafting oversight. At the time the Order was drafted there was a possibility that Triad would have insufficient assets to pay one hundred percent of claims in cash at all times. That is the reason the DPO plan was implemented. Under the DPO plan, sixty percent of all claims are paid in cash and forty percent are paid in the form of a DPO.
- e. It was and still is projected that Triad will have sufficient assets to be able to pay at least sixty percent of each claim in cash for the duration of the run-off. The DPO's will be settled with the assets remaining.
- f. The current escrow language in the Order is inconsistent with the purpose of the DPO plan because compliance can only occur if Triad has sufficient assets at all times to satisfy all claims by paying sixty percent of the claim amount in cash and escrowing assets equal to forty percent of the claim or the DPO amount.
- g. If Triad had sufficient assets to do this, then Triad can pay every claim in cash and the DPO plan would be unnecessary. Triad's proposed amendment would delete the absolute requirement of an escrow and make it at the discretion of the Director of Insurance. The Director would have the flexibility to require escrowing of assets depending on the circumstances and what is in the best interest of the policyholders.
- h. Under the existing language of the Order, the Department monitors every company expenditure and most non-routine expenditures require preapproval. Even routine expenditures require pre-approval if they exceed a predetermined amount. These requirements coupled with the proposed amended language maintain the Department's ability to preserve the company's assets for the benefit of the policyholders.
- i. The second proposed amendment to the Corrective Order would eliminate the unintended outcome of crediting interest to the DPO's in excess of investment earned by the company's invested assets. The amendment would require that one hundred percent of the investment income earned on Triad investment portfolio be credited to the DPO holders when the aggregate amount of the DPO exceeds investment assets.
- j. The current interest crediting language applies to the interest rate Triad earns on its investment portfolio to the aggregate DPO balance to determine the amount of interest to be accrued to the DPO's. This formula works well as long as the investment portfolio is equal to or larger than the aggregate DPO balance.

- k. The proposed amendment would leave the formula unchanged when the invested assets exceeds the DPO balance. However, the formula results in crediting in greater dollar amount of investment income to the DPO's that Triad earns when the investment portfolio is less than the aggregate DPO balance. The proposed change would credit one hundred percent of the investment income earned, but no more than the investment earned to the DPO holders in this situation.
 - l. The final topic involves the nature of the run-off plan and how it should be managed. Triad believes the Department implemented a viable, responsive and efficient run-off plan which should be permitted to continue. The Department considered various alternatives before settling on the current plan.
 - m. The plan utilizes the DPO structure to maintain regulatory solvency which permits the company to continue to function to service its policyholders, assist in the implementation of policyholder and government initiatives to preserve homeownership and maximize the assets available to pay policyholder claims.
 - n. The company has downsized from 260 employees to less than 50, but has been able to retain key employees with the expertise and experience necessary to efficiently and effectively run the business. The company's information systems and related intellectual property were sold generating over \$35 million in value.
 - o. Occupancy costs have been reduced and functions were eliminated as soon as it became cost effective to do so. Outsource functions were moved to a variable cost basis which has the dual benefit of retaining expertise while reducing cost. Excluding contract underwriting expenses, general expenses have decline from \$56 million in 2008, the first year of the run-off, to a projected \$13 million this year.
 - p. On the same basis, since 2009, Triad is almost \$22 million under the general expenses projected in the run-off plan approved by the Department. Triad has maintained transparency with its policyholders, including Fannie Mae and Freddie Mac as well as the Illinois Department of Insurance. The next two or three years will be critical to maximizing the value available to pay policyholder claims and the current run-off structure is ideally suited to accomplish this objective.
15. Mr. Jeremiah Sheehan, of Manatt, Phelps, and Phillips, representing Freddie Mac, asked for clarification with respect to the escrow account. Mr. Sheehan stated the Notice says whether to allow Triad to forego or reduce future funding of the escrow. Mr. Sheehan asked if the intent is to keep what is escrowed now and reduce it in the future or is the intent to simply eliminate the escrow.
- a. Mr. Ken Jones responded that currently, the Order requires Triad to escrow assets in support of the DPO's. Triad is now in a situation, and began working with the Department last year, with the understanding based on projections that Triad would be in a position in the second half of 2012. Triad proposed an amendment to the Order that would allow the Director at his discretion to require escrow of a portion of the assets.

- b. Triad is not opposed to escrowing assets. Triad just cannot comply with the terms of the Order to fully escrow assets equal to the DPOs because the DPO's are in excess of the available assets.
16. Mr. Sheehan inquired as to what happens with regard to the escrow if the Order is amended? Does it just simply go out of existence?
- a. Mr. Jones responded that the intention there is currently to escrow that amount. The proposed amendment says the requirement to escrow that amount goes away.
 - b. The Department under the proposed language has the ability to say escrow the maximum amount that you have assets available to escrow or because of the other protections under the Order the Department will eliminate the requirement entirely. It is discretionary to the Director.
17. On Cross-Examination by the Department, through Mr. Gail, Mr. Jones and Mr. Wall testified as follows:
- a. If the Department did not allow Triad to reduce the escrow payments, then Triad would be unable to comply with the terms of the second Corrective Order related to the escrow requirement. However, Triad would be able to continue executing the run-off plan, pay all current claims at 60 percent or greater as determined by the Department, and ultimately pay a portion of the DPOs. Eventually, Triad would be unable to pay 60 percent, and would actually be funding the escrow an amount higher than the amount paid towards claims.
 - b. If the Department grants Triad's request to reduce the escrow payments, the amount put in escrow would be determined by the Director.
 - c. Triad's position on the escrow payments is that they are redundant. While they will continue to pay them if the Director so orders, or if their policyholders find value in them, Triad believes that there is sufficient protection for the policyholders without the need for escrow payments.
 - d. Triad has not attempted to ascertain the opinion of the policyholders on the escrow issue as the Department has established hearings in which policyholders can provide input.
 - e. The money currently in escrow is within Triad's assets already on the company's balance sheets. Triad pays some incremental amount to maintain that escrow as well as operating efficiencies for transferring funds to it. Triad believes the escrow is unnecessary, therefore they believe that it is not the best interests of the policyholders to continue to incur the expense of maintaining that account.
 - f. Since the escrow requirement was instituted, Triad has funded that requirement in full until the month prior to this hearing.

- g. If the Department does not allow Triad to change the way it calculates interest, Triad would be forced to report net negative investment income in their statutory financial statements because interest is deducted from investment income for the purposes of reporting investment income. This would mean crediting to the DPO holders more investment income than was earned and reporting net negative investment income. This would result in an advantage to earlier DPO holders versus DPO holders on later claims as the yield credited to the DPO will be higher than actually earned.
- h. Triad's initial financial projection of December 2008, predicted that Triad would be able to pay all claims when due. This projection was supported by a projection from a firm considered to be an expert in the mortgage credit industry. Both projections acknowledged that there was a great deal of uncertainty in the forecast and it was plausible that all claims could not be paid. The projections also indicated that there would be a period of balance sheet insolvency. The combination of uncertainty in the forecast and balance sheet insolvency was the reason the second corrective order setting out the capital maintenance plan was issued.
- i. In the forecast provided to the Department on June 30, 2009, Triad's projection indicated that they would not be able to pay claims in full and that there remained a great deal of uncertainty in the forecast.
- j. In subsequent forecasts, the projected percentage of obligations to be paid has varied, but the most recent forecast indicates that Triad will be able to pay over 80 percent of the total obligations to be incurred under the capital maintenance plan, which means that over 50 percent of the DPO balance is projected to be paid.
- k. The primary assumption that changed since the December 2008 forecast was the actual and expected loss experience driven by both the recession of 2008 and the five year decline in home prices that continued through 2011.
- l. The inclusion of the DPO was necessary for Triad to avoid insolvency. The DPO balance is treated as a liability for Generally Accepted Accounting Principles (GAAP) so that other than preserving assets, the DPO does not affect Triad's GAAP reporting.
- m. The deferred payment obligation currently stands at about \$738 million, but the amount will continue to grow as Triad pays claims in the future. Assuming Triad's assets and liabilities were liquidated, Triad would be able to pay 46 percent of that. However, that number is theoretical as it assumes that reserves for future defaults are paid as recorded when for most reserve defaults the insured does not have a perfected claim until a later date.
- n. Over the duration of the run-off projections, which have been carried through 2022, Triad projects total DPO and accrued interest will amount to \$1.3 billion and Triad will be able to pay 58% of these obligations. However, that prediction also contains a number of assumptions and should not be relied upon for an exact number.

- o. The DPO obligation is not treated as a liability on Triad's financial statement. It is treated as a subordinated debenture eligible to be included in capital, much like a surplus note. Payments under the DPO cannot be made without the approval of the Director and when payments are made, all existing DPOs will be paid at the same percentage amount.
- p. If the DPO were treated as a liability and not as a surplus note, Triad would be statutorily insolvent.
- q. Triad is fully participating in the Home Affordable Refinance Program (HARP). HARP has not affected Triad's profitability and premium does not go down when a policy holder participates in HARP.

18. On cross-examination, the Department, through Mr. Gail, entered one exhibit into the record.

- a. A press release dated August 14, 2012, printed from the Triad website which reports quarterly results. (Department Exhibit # 1).

19. When questioned about Department Exhibit # 1, Mr. Jones and Mr. Wall testified as follows:

- a. The document is Triad's August 14, 2012 press release and it correctly indicates that Triad's liabilities exceed its assets by \$771.4 million at the time of release.
- b. While the press release states that Triad's assets in future premiums will not be sufficient to meet their current and future policyholder obligations, it does not mean that the full \$771.4 million will not be paid.
- c. Because Triad expects its financial position to improve by approximately \$250 million and the trends in new defaults continues to improve, Triad believes that sometime in 2013, the level of losses will decline to a point where it will be profitable on a GAAP basis and the deficit will be reduced. These predictions are much less volatile than the projections of 2008, as there is a wealth of experience concerning what happened in the mortgage and credit market. Triad is more confident in this projection than the 2008 projections.
- d. The press release references positive changes in the economy and the residential real estate market. These changes include significantly improved employment, which results in lower future defaults and enables expanded participation loan modification programs that increase the rate on current defaults. Continued improvements in the housing market help mitigate losses and reduce loss severity. However, these changes are not certain to continue.
- e. Triad has not modeled the impact of communities using eminent domain as a vehicle to assist homeowners because it is speculative and untested. However, based on their understanding of the proposal under discussion, Triad would benefit financially because there would be no triggering event to file a claim. The extent of the benefit would be based on how widespread the practice becomes and how many loans would be effected.

- f. The plan Triad has examined with respect to eminent domain do not relieve the policy holder of the obligation to pay the premium. However, Triad has not examined every plan.
- g. Triad is not a party to any litigation which, if decided in Triad's favor, would have a positive financial impact.
- h. However, Triad is a party to a series of class actions as well as a lawsuit with a single lender which could have a material negative financial impact if successful. Triad believes the class actions are without merit, and has entered into a settlement agreement, subject to regulatory approval.
- i. With regard to the class actions, Triad is currently a party to four class action suits in which plaintiffs claim that captive reinsurance violates RESPA. The plaintiff are seeking statutory recovery under RESPA however, Triad believes that they met all requirements needed to make captive reassurance agreements as outlined in a HUD letter. Furthermore, the programs were reviewed by the Department as well as the Vermont Department of Insurance.
- j. If these class actions were successful, they would most likely not result in a reduced stream of payments from reinsurers to Triad, as most of the assets from the captives have been recovered. While there are still some outstanding, plaintiffs would be seeking a statutorily imposed penalty, which is a per se violation penalty of the judge's discretion. These cases are currently under review to be consolidated.
- k. Triad has no current plans to bring additional capital into the company and there are no realistic possibilities of another company merging with or acquiring Triad.
- l. Triad has substantially reduced its expenses while maintaining key employees to maintain efficiency and experience. The general expenses for 2012 are projected to be 50 percent of what they were in 2009, the first full year of run-off. Excluding nondiscretionary expenses, Triad's expenses are projected to be only \$10 million. At this level, general expenses will be less than 7.5 percent of 2012 premiums. Going forward, Triad's forecast indicates that total future general and loss adjustment expenses will be less than 9 percent of future settled losses.
- m. Triad has prepared a stress forecast which assumed \$500 million in additional future losses in addition to what was included in the baseline forecast. The stress forecast was applied both to reserve development and losses for future defaults. The loss frequency for current defaults was raised to increase projected settled losses from current defaults to 25 percent greater than Triad's current reserves.
- n. Primary future losses were doubled from the baseline and from Triad's modified pool contracts all contracts after 2004 were assumed to reach the stop loss for the maximum amount Triad is required to pay and losses in contracts prior to 2004 were doubled. The results of the stress forecast showed that Triad continued to remain solvent under the

capital maintenance plan, would continue to pay 60 percent of each claim in cash and would be about to repay about 30 percent of the DPOs issued under the stress scenario.

- o. Triad has not done a recent analysis on the impact of being placed into conservation by the Department. However, when Triad initially went into a run-off, Triad and the Department analyzed a number of different options for the run-off and determined that the corrective action plan as adopted would be the most efficient way to maximize the value available to policyholders. However, the basis of that opinion is unknown today.
 - p. As part of the development of the capital maintenance plan, there was a study done by an independent third party that was provided to the Department looking at the cost of a variety of actions, the management led run-off or rehabilitation. This report, the Smart Report, has not been updated to bring its analysis to the present, and Triad has done no analysis to determine if rehabilitation would be more effective than the current plan.
- 20. In its closing statement, Triad, through Mr. Jones, stated that while there were no plans to acquire more capital, one of the initial objectives of the run-off plan was to monetize the company's intangible assets. This included the transaction with Essent, which resulted in close to \$40 million in value.
- 21. There is another large asset remaining: Triad's tax loss carry forwards. However, realizing those carry forwards could not be accomplished by TGIC on a standalone basis; it would require the parent, TGI, generating taxable earnings that could be offset by the loss carry forwards with a portion of the tax savings committed to TGIC. While there is no guarantee, this is a possible way more funds could be provided to the DPO holders, but it would not allow DPOs to be paid in full.
- 22. In its closing statement, the Department, through Mr. Rundblom, stated that the purpose of the hearing was to provide information to the Director regarding Triad's request to amend the DPO and the intended carrying charge provision as well as to decide whether a different regulatory approach should ensue. The Department has previously sent a letter to Triad regarding what is done during conservation or rehabilitation. The letter stated that in rehabilitation, new claims would be permitted. The company in rehabilitation would continue to collect premiums and coverage would not be terminated. Any costs associated with rehabilitation would be managed to minimize the impact to policyholders.
- 23. Net costs to the company would be unlikely. Conservation is designed to allow the Director to ascertain the condition and situation of the company and to conserve its assets during that process. Claims intake coverage, premium revenue would not be disrupted by a conservation order and presently liquidation is not under consideration by the Department.

PROCEDURAL MATTERS

Various stakeholders provided written submissions to the Department by November 30, 2012, which have been read and considered by the Department.

CONCLUSIONS

Section 188 of the Code, 215 ILCS 5/188, provides the grounds for rehabilitation of a domestic company as follows:

Whenever any domestic company....

1. is insolvent;

* * *

6. is found to be in such condition that its further transaction of business would be hazardous to its policyholders, or to its creditors, or to the public.

Respondents have failed to comply with the applicable requirements of the second Corrective Order that they maintain escrowed funds in an amount equal to its liabilities for the "Deferred Payment Obligations" plus carrying charges. As of August 14, 2012, Triad's liabilities exceed its assets by \$771.4 million. Triad has no current plans to bring additional capital into the company and did not express any realistic possibilities of another company merging with or acquiring Triad.


Based upon the hearing, the Director would be correct in determining that conditions exist that would justify a court order for the rehabilitation of Respondents. Sufficient cause exists for the entry of an order for rehabilitation of the Respondents.

RECOMMENDATIONS

Based upon the above stated Findings of Fact, Conclusions of Law and the Record in this matter, the Hearing Officer offers the following Recommendations to the Director of Insurance:

- 1) That the Director find TGIC is insolvent and Respondents' further transaction of business would be hazardous to its policyholders, creditors or to the public; and Order the Rehabilitation of the Respondents; and
- 2) That the cost of this proceeding be waived.

Date: December 7, 2012


Louis Butler
Hearing Officer